

GREENFIRE LAW, PC

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AS YOU SOW, a 501 (c)(3) non-profit
corporation,

Plaintiff,

v.

ETSY, INC., and DOES 1-20, inclusive

Defendants,

Case No.: 24-cv-04203-MMC

**DECLARATION OF RAE LOVKO IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO COMPEL ARBITRATION,
OR IN THE ALTERNATIVE, TRANSFER
VENUE**

1 I, Rae Lovko, do declare and state:

2 1. If sworn as a witness, I could and would testify to my personal knowledge of the
3 facts set forth herein.

4 2. I am an attorney with Greenfire Law PC, counsel for AS YOU SOW, in this action.

5 3. Plaintiff avers that ETSY has violated Proposition 65 by selling mercury-containing
6 skin whitening creams on its online marketplace. The exemplar creams identified in Plaintiff's
7 complaint are Deluxe Nadinola Bleaching Cream, Due Beauty Cream, Faiza, La Tia Mana Crema
8 Limpiadora y Curativa, Miss Key Crema Blanqueadora, Jing Zhuang Jinyiqui/"Yiqi", La Magia
9 Blanca de Michelle Marie Crema Blanqueadora, Parley Beauty Cream, and Shivanya Beauty
10 Cream. (Complaint, p. 13.)

11 4. Between September 20, 2024, and January 24, 2024, a student clerk at Greenfire
12 purchased the following skin whitening creams from Defendant ETSY, INC.'s ("ETSY") website:
13 Faiza Beauty Cream, Caro White Lightening Beauty Lotion, Parley Goldie Cosmetics Original
14 Anti Blemish Cream,¹ and La Unica Cream Casa Botanica. On January 9, 2024, the office
15 manager at Greenfire purchased the following skin whitening creams from Etsy's website: Due
16 Beauty Face Cream, La Magia Blanca de Michelle Marie, Crema Blanqueadora, and Snow White
17 Blemish and Anti-Aging Night Cream. When these purchases were made, Greenfire never
18 represented to ETSY that the purchases were being made as an agent of AYS.

19 5. These products were purchased for investigation purposes. Some, but not all, are
20 identified in Plaintiff's Complaint. The scope of the Complaint is all "skin lightening, whitening,
21 and 'smoothing' creams containing mercury or mercury compounds" and extends to the "many
22 consumers" who are using and being exposed to mercury as a result of those consumers' purchases
23 from www.etsy.com. (Compl. p. 12, ¶¶62, 66)

24 6. AYS has reimbursed Greenfire Law for the purchase of some, but not all, of these
25 products.

26 7. AYS' claims do not arise or relate to Greenfire's purchase of the creams identified
27 above in Paragraph 4 because AYS could have filed the Complaint regardless of whether
28

¹ Further, Greenfire never actually received the Parley Goldie cream.

1 Greenfire ever purchased any products from ETSY's website. Plaintiff's claims for relief are not
2 based on these purchases, on any actions or statements by ETSY in selling these products to
3 Greenfire, or any exposures to mercury resulting from these purchases. Further, without waiving
4 any privilege, I know the Proposition 65 60-Day Notices sent to ETSY in this case were not based
5 on these purchases.

6 8. No Greenfire employee has used the skin whitening products for their intended use,
7 but rather, the creams were purchased investigation purposes. In receiving, handling, and/or
8 storing these products, safety protocols were followed to ensure that no one was exposed to
9 mercury or mercury compounds in these products. That is, the products were not used in the
10 manner of an ordinary consumer.

11 9. Plaintiff sent factual information supporting its Certificates of Merit for the January
12 18, 2024, and March 15, 2024, Proposition 65 notices sent to ETSY, which information included
13 the identity of the persons consulted with and relied on by the certifier and the facts, studies, and
14 other data reviewed by these persons. On March 13, 2024, and March 27, 2024, the California
15 Attorney General issued "No Merit" letters after reviewing the factual information. Plaintiff
16 disagrees with the Attorney General's conclusion that the factual information is insufficient to
17 conclude there is merit to each element of Plaintiff's Proposition 65 claims.

18 10. Because AYS has not been exposed to any mercury-containing skin creams
19 purchased from ETSY, Plaintiff's Proposition 65 claims are based upon ETSY's sale of mercury-
20 containing skin creams to California consumers other than AYS.

21 11. Prior to sending the 60-Day Notices to ETSY, on December 22, 2023, Greenfire
22 Law, PC notified Etsy.com's CEO and Chief Legal Officer that illegal mercury-content creams
23 were listed on Etsy.com in violation of law. The letter identified examples of such creams and
24 where they were posted on Etsy.com, identified the source of information that the products
25 contained mercury—primarily public health alerts, and provided test results showing mercury in
26 the products. The letter in no way relied upon any purchase from ETSY. The letter lists additional
27 products *not* found on ETSY which contain mercury to alert ETSY so ETSY could avoid them
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1 ever being posted on ETSY. A true and correct copy of the December 22, 2023, letter is attached
2 hereto as **Exhibit 1** and the exhibits to the December 22, 2023, letter as **Exhibit 2**.

3 12. A true and correct copy of the acknowledgement of receipt of the letter received
4 from Etsy.com on December 23, 2023, is attached hereto as **Exhibit 3**. Notwithstanding the
5 acknowledgment, skin whitening products containing mercury continued to be listed on Etsy.com
6 after that date.

7
8 I make this declaration under penalty of perjury under the laws of the United States of
9 America, executed this 20th day of August, 2024, in Berkeley, California.

10 GREENFIRE LAW, PC

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13 By: 

14 RAE LOVKO
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